

1 HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 ABDIQAFAR WAGAFE, et al.,
11 Plaintiffs,
12 v.
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14 DONALD TRUMP, et al.,
15 Defendants.

CASE NO. C17-94 RAJ
ORDER

16 This matter comes before the Court on Defendants' Motions for Leave to Submit
17 Documents *Ex Parte, In Camera*. Dkt. ## 227, 267. Plaintiffs oppose Defendants'
18 Motions, and Defendants have filed Replies. Dkt. ## 239, 254, 270, 271. For the reasons
19 stated below, the Court **GRANTS** Defendants' Motions.

20 Defendants filed their first Motion in support of their Opposition to Plaintiff's first
21 Motion to Compel (Dkt. # 221) and Cross-Motion for a protective order (Dkt. # 226). In
22 their first Motion to Compel, Plaintiffs seek additional productions of "why" information,
23 including A Files. Dkt. # 221. Defendants seek to file declarations to file *ex parte* and *in*
24 *camera* declarations from Jay S. Tabb, Jr., Executive Assistant Director of the National
25 Security Branch of the Federal Bureau of Investigation ("FBI"), Matthew D. Emrich,
26 Associate Director of the Fraud Detection and National Security ("FDNS") Directorate,
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1 U.S. Citizenship and Immigration Services (“USCIS”), Department of Homeland
2 Security (“DHS”), and Matthew C. Allen, Assistant Director, Domestic Operations,
3 Homeland Security Investigations (“HSI”), an agency in DHS. Dkt. # 227. Defendants
4 contend that these declarations contain both “classified” and “sensitive nonpublic
5 explanations of the harms and risks that can be expected to result if information
6 Defendants have withheld from production were disclosed outside the U.S. government.”
7 *Id.* at 2. Defendants have also filed public versions of the Tabb and Allen Declarations.
8 Dkt. # 226-2, Exs. D, F.

9 Defendants filed the second Motion in support of their Opposition to Plaintiff’s
10 Motion to Compel Documents Withheld Under the Law Enforcement/Deliberative
11 Process Privilege. Dkt. ## 260, 266. In this Motion to Compel, Plaintiffs seek
12 production of unredacted copies of 25 documents that Defendants are withholding on the
13 basis of, *inter alia*, the law enforcement privilege. Dkt. # 260. In support of their
14 Opposition, Defendants seek to submit a Declaration of Timothy P. Groh, Deputy
15 Director for Operations of the Terrorist Screening Center, who attests to the potential
16 harm that may occur to that agency should certain information contained in these
17 documents be disclosed. Defendants have filed a public version of Mr. Groh’s
18 declaration (Dkt. # 266-1, Ex. D), and seek leave to file a more expansive version under
19 seal to permit the Court to properly evaluate Defendants’ privilege claims on this basis.
20 Dkt. # 267. Defendants submit that Mr. Groh’s declaration contains law enforcement
21 sensitive information regarding the TSDB and FBI’s watchlisting processes, and it is thus
22 necessary for the Court to evaluate the privilege claims *ex parte* in order to protect that
23 information. *Id.*

24 The Court has attempted to endeavor to create as complete a public record as
25 possible. The Court is also concerned with allowing Defendants to establish a general
26 practice of filing supporting material for motions *ex parte* and *in camera*, and
27 understands Plaintiffs’ frustration with the potential unfairness of the process. However,

1 in these limited instances, the Court is satisfied that it must review the Declarations at
2 issue because they will inform what relief, if any, should be afforded Plaintiffs in
3 connections with their discovery motions. While the Court agrees with Plaintiffs, again,
4 that these privilege claims could have been raised sooner, the Court has already issued
5 appropriate sanctions for Defendants' discovery-related behavior. Dkt. # 223. Given the
6 articulated potential harm of public disclosure to agency internal processes, and the
7 disclosure of several public versions of the Declarations, the Court concludes that it is
8 appropriate to review the subject declarations *in camera* in this instance. For these
9 reasons, the Court **GRANTS** Defendants' Motions to file the Declarations of Mr. Groh,
10 Mr. Tabb, Mr. Emrich, and Mr. Allen *ex parte* and *in camera*. Dkt. ## 227, 267.

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12 Dated this 3rd day of June, 2019.

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18 The Honorable Richard A. Jones
19 United States District Judge
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